

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: CHARLES P. COWIN)	CASE NO. 10-31478
)	Chapter 11
)	
Debtor)	
<hr/>		
FEDERAL HOME LOAN)	
MORTGAGE CORPORATION)	
)	
vs.)	
)	
CHARLES P. COWIN)	

MOTION OF FEDERAL HOME LOAN MORTGAGE CORPORATION
FOR ORDER TERMINATING AUTOMATIC STAY
TO PERMIT FORCIBLE DETAINER TRIAL TO CONTINUE
1901 Post Oak Blvd Unit 604 Houston, Texas

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON APRIL 6, 2010 @ 9:00 A.M. IN JUDGE BOHM'S COURTROOM 600 LOCATED ON THE 6TH FLOOR AT 515 RUSK, HOUSTON, TEXAS. IF YOU OBJECT TO THE GRANTING OF RELIEF FROM THE STAY, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT AT LEAST FIVE BUSINESS DAYS PRIOR TO THE HEARING AND YOU MUST ATTEND THE HEARING. THE COPY SENT TO THE MOVANT MUST BE DELIVERED BY HAND OR BY ELECTRONICALLY DELIVERY IF IT IS SENT LESS THAN FIVE BUSINESS DAYS PRIOR TO THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE HEARING MAY BE AN EVIDENTIARY HEARING AND THE COURT MAY GRANT OR DENY RELIEF FROM THE STAY BASED ON THE EVIDENCE PRESENTED AT THE HEARING.

IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING, AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN FIFTEEN (15) DAYS THIS MOTION WAS MAILED TO YOU AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF.

TO THE HONORABLE JUDGE OF SAID BANKRUPTCY COURT:

The Federal Home Loan Mortgage Corporation (hereinafter called "Movant"), files this its Motion for Relief from the Automatic Stay to allow it to exercise its state law remedies to secure possession of the real property located at 1901 Post Oak Boulevard Unit 604 Houston, Texas, (the Subject Property) against Charles P. Cowin, hereinafter called "Debtor", and would respectfully show unto this Court the following:

I.

This Court has jurisdiction over this proceeding pursuant to the provisions of 28 U.S.C. Sections 1471, 1334, 362 and 363.

II.

CHRONOLOGICAL FACTUAL BACKGROUND

- a. On July 21, 2006, Dante Thompson executed a deed of trust for the benefit of Choice Home Financing LLC dba CHF Mortgage.
- b. According to documents furnished Movant by G.P. Matherne, an attorney representing Debtor in the forcible detainer action, on July 7, 2009, the Lofts on Post Oak Condominium Owners Association, Inc., conducted a non-judicial foreclosure sale purportedly based upon Dante Thompson's failure to pay maintenance assessments. Khyber Holdings L.L.C. was the grantee at the condominium association's foreclosure sale.
- c. On or about August 1, 2009, Khyber Holdings, LLC purportedly entered into a Residential Lease with the Debtor for the real property which is the subject of this motions.
- d. On September 1, 2009, the lien created by the deed of trust described on subparagraph a was foreclosed. Movant acquired title at the foreclosure sale.
- e. A forcible detainer proceeding is pending in the County Court at Law Number 3 of Harris County, Texas styled *Federal Home Loan Mortgage Corporation vs*

Dante Thompson and/or all current occupants of 1901 Post Oak Blvd. Unit 604 Houston, Texas bearing Docket Number 955400.

- f. On February 24, 2010, Debtor filed a Petition under Chapter 11 of the Bankruptcy Code, and pursuant thereto, an Order for Relief was granted.

III.

Cause exists to terminate the Automatic Stay for the following reasons:

1. Debtor did not own the Subject Property at the time this case was filed.

Accordingly, it is not property of the Debtor or his Bankruptcy estate. Moreover, the subject property does not appear in the petition or schedules filed to date by the Debtor.

2. Any lease agreement Debtor may have had with Khyber Holdings, LLC has been terminated. Moreover, Debtor has not paid or attempted to pay any rental payments to Movant since its acquisition of the Subject Property in September 2009. For these reasons, cause also exists to terminate the Automatic Stay.

WHEREFORE, PREMISES CONSIDERED, Movant prays that upon final hearing of this Motion, that this Court terminate that Automatic Stay to permit Movant to take all steps necessary to secure possession of the Subject Property in accordance with applicable Texas law. Movant prays that the provisions of Rule 4001(a)(3) not apply to any order issued by this Court in connection with this motion. Movant prays for such other and further relief, at law or in equity, to which it may show itself justly entitled.

Respectfully requested,

By: CRISTINA PLATON CAMARATA
/s/ Cristina Camarata
Cristina Camarata
Bar No. 16061560
310 Amber Lane
League City, Texas 77573
(281)686-1446

Jack O'Boyle & Associates
Bar No. 15165300
P.O. Box 815369
Dallas, Texas 75381
972 247 0653
Fax 972 247 0642
Attorneys for Movant

CERTIFICATE OF CONFERENCE

On March 9, 2010 the undersigned contacted the legal assistant for Debtor's Counsel via email regarding the relief requested. He responded that Mr. Fuqua would have to respond and forwarded my email to him. As of March 12, 2010, I have not heard back from Mr. Fuqua.

/s/ Cristina Platon Camarata
Cristina Platon Camarata

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion to For Relief from the Automatic Stay has been sent to the persons listed below electronically or by first class mail on March 15, 2010:

First Class and Electronically:

Richard L. Fuqua, II
2777 Allen Pkwy Ste 480
Houston, Texas 77019

Electronically Only:

United States Trustee
515 Rusk Ave., Ste. 3516
Houston, TX 77002

First Class Mail:

Charles P. Cowin
1707 ½ Post Oak Blvd
PMB 263
Houston, Texas 77056

Parties on the attached Matrix:

/s/ Cristina Platon Camarata
Cristina Platon Camarata